

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDGER PATRICK ODUOL,	:	
	:	
Petitioner,	:	No. 4: CV-09-01577
	:	
v.	:	(McClure, J.)
	:	
MARY SABOL, et al.,	:	(Magistrate Judge Smyser)
	:	
Respondents.	:	

MEMORANDUM

November 23, 2009

INTRODUCTION:

On August 17, 2009, petitioner Edger Patrick Oduol, an alien in the custody of the United States Immigration and Customs Enforcement (“ICE”), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Rec. Doc. No. 1). Oduol is challenging his detention by ICE, as the agency is detaining him while his removal proceedings continue. Oduol named as respondents in his petition Mary Sabol, the York County Prison Warden; Thomas Decker, the Philadelphia Field Office Director for Detention and Removal; John Torres, the Acting Assistant Secretary of ICE; Janet Napolitano, the Secretary of the U.S. Department of Homeland Security; and Eric Holder, the Attorney General of the U.S. Department of Justice. All respondents are sued in their official capacities.

BACKGROUND:

In conjunction with his petition for habeas corpus, Oduol also filed an Application for Issuance of Order to Show Cause, in which he requested that this Court issue an order requiring the respondents to show cause why his petition for writ of habeas corpus should not be granted. (Rec. Doc. No. 2). Oduol also filed an application to proceed in forma pauperis. (Rec. Doc. No. 3). On September 2, 2009, the magistrate judge granted Oduol's request to proceed in forma pauperis and issued an order to show cause on respondents, requiring that they show cause why Oduol's petition for habeas corpus should not be granted. (Rec. Doc. No. 4). On September 17, 2009, respondents filed a response to Oduol's petition for writ of habeas corpus. (Rec. Doc. No. 5). The petitioner did not file a reply.

On October 19, 2009, the magistrate judge issued a Report and Recommendation, in which he recommended that all of the named individuals be dismissed as respondents, that the petition be denied, and that the case file be closed. (Rec. Doc. No. 6). Objections to the Report and Recommendation were due by November 5, 2009; however, to date, no objections have been filed with this Court.

Because we agree with the magistrate judge's thorough Report and Recommendation that recommends the petition be denied, we will adopt the

magistrate judge's Report and Recommendation in full and dismiss the petition.

STANDARD OF REVIEW:

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

DISCUSSION:

A writ of habeas corpus is to "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. For the purposes of who is considered to be the custodian of a detained individual, the United State Supreme Court has held that "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." Rumsfeld v. Padilla, 542 U.S. 426, 436 (2004).

Oduol is currently incarcerated in the York County prison. Therefore, the magistrate judge was correct in concluding that the warden of York County Prison, Mary Sabol, is the correct respondent in the instant case. As such, respondents Decker, Torres, Napolitano, and Holder must be dismissed as respondents. As for the remaining respondent, Warden Sabol, we concur in the conclusion of the magistrate judge that the petition should be denied. This denial is warranted, as

Oduol's continued detention is not violative of due process in light of the review conducted by the immigration judge and the opportunity afforded to Oduol for appeal.

No objections have been filed to the Report and Recommendation. Because Oduol has elected not to object to the Report and Recommendation and because we agree with the magistrate judge's analysis and recommendation, we will adopt the Report and Recommendation in full. For the purposes of judicial economy, we will not rehash the sound reasoning employed by the magistrate judge. Therefore, Oduol's petition must be denied.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge

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ORDER

November 23, 2009

NOW, THEREFORE, IT IS ORDERED THAT:

1. United States Magistrate Judge J. Andrew Smyser's Report and Recommendation is adopted in full. (Rec. Doc. No. 6)
2. Oduol's habeas petition is denied. (Rec. Doc. No. 1).
3. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge